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MAR 19 1992

HOWARD HANSON
MARIN COUNTY CLERK
By E. Keswick, Deputy

1 HUB LAW OFFICES
2 Ford Greene, Esquire
3 California State Bar No. 107601
4 711 Sir Francis Drake Boulevard
5 San Anselmo, California 94960-1949
6 Telephone: (415) 258-0360

7 Attorney for Defendant
8 GERALD ARMSTRONG

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF MARIN

RECEIVED

MAR 19 1992

11 CHURCH OF SCIENOTOLOGY)
12 INTERNATIONAL, a California)
13 not-for-profit religious)
14 corporation;)
15 Plaintiffs,)
16 vs.)
17 GERALD ARMSTRONG; DOES 1)
18 through 25, inclusive,)
19 Defendants.)

No. 152 229

HUB LAW OFFICES

DEFENDANT ARMSTRONG'S REPLY
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS OR STAY
OR TRANSFER TO LOS ANGELES
SUPERIOR COURT

Date: March 20, 1992
Time: 9:00 a.m.
Dept: Four (4)
Trial/Arbitration: None

19 Plaintiff's opposition to Armstrong's motion to transfer is
20 predicated upon the notion that Armstrong should be judicially or
21 collaterally estopped from making such motion because Judge
22 Geernaert has already decided that the Los Angeles Superior Court
23 did not have jurisdiction over this case.

24 What plaintiff fails to recognize is that Judge Geernaert
25 found that he did not have jurisdiction predicated upon two, very
26 narrow bases. Plaintiff had asserted those bases in its efforts
27 to have Judge Geernaert enforce against Armstrong, without even
28 the benefit of an evidentiary hearing, an agreement that had never

COPY

1 been before the Court, not to mention never incorporated into a
2 judgment or an order.

3 In the December 23, 1991, proceedings before Judge Geernaert
4 in Los Angeles Superior Court, Scientology asked the Court to
5 summarily enforce an agreement which the Court had never seen.
6 Scientology predicated this spurious and heavy-handed legal effort
7 on Code of Civil Procedure sections 664.9 and 127 (4) (a).

8 Both sections share the common requirement that in order for
9 the Court to enforce an Order, it must have an Order to enforce.
10 If there is no Order, no Order can be enforced. Thus, the
11 existence of an Order is the *sine qua non* of any judicial
12 enforcement action.

13 Section 664.6 states:

14 If the parties to pending litigation stipulate, in
15 writing or orally before the court, for settlement of
16 the case, or part thereof, the court, upon motion, may
17 enter judgment pursuant to the terms of the settlement.

18 Section 127 (a) (4) states:

19 Every court shall have the power to do all of the
20 following: . . . To compel obedience to its judgments,
21 orders, and process, and to the orders of a judge out of
22 court, in an action or proceeding pending therein.

23 As stated by Judge Geernaert and quoted by plaintiff in its
24 opposition at 6:15-18, he concluded

25 "that 664.6 does not grant this court jurisdiction
26 over Mr. Armstrong personally or jurisdiction to, quote,
27 enforce the agreement; nor does 127 (a) (4) in that
28 there was never an order by Judge Breckenridge requiring
the parties to perform the agreement."

Exhibit 1-A of Evidence In Support of Motion To Transfer at 63:5-

1 10. ^{1/}

2 Therefore, what is clear is that Judge Geernaert decided that
3 neither 664.4 nor 127 (a) (4) gave him "personally [jurisdiction
4 over Armstrong] or jurisdiction to, quote, enforce the agreement."
5 Aside from those narrow determinations, it is equally clear Judge
6 Geernaert did not make any determination that the Los Angeles
7 Superior Court did not have jurisdiction generally over the
8 subject matter of this lawsuit or over the person of Gerald
9 Armstrong. Thus, plaintiff's contentions that Armstrong should be
10 estopped from moving to transfer the proceeding to Los Angeles are
11 not well held and should be rejected.

12 Based upon the arguments and authorities set forth in the
13 motion, the contentions set forth in plaintiff's opposition, and
14 the points set forth in this reply, Gerald Armstrong respectfully
15 submits that his motion to transfer should be granted.

16 DATED: March 19, 1992

HUB LAW OFFICES

17
18
19 BY: 

FORD GREENE

Attorney for Defendant
GERALD ARMSTRONG

21
22 ¹ It is worth noting that the section of Judge Geernaert's
23 decision that plaintiff decided to omit from the foregoing quote
set forth in its opposition was the following which states:

24 "My belief is that had he [Judge Breckenridge] been
25 asked to do so [order performance of the agreement], he
26 would have declined even on pain of having the
27 settlement blow up because that is just another four
lawsuits waiting to happen, in my experience, when you
have an agreement like this."

28 Exhibit 1-A to Evidence In Support of Motion to Transfer at 63:11-
15.

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

DEFENDANT'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS, STAY, OR TRANSFER CASE TO LOS ANGELES SUPERIOR COURT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

By Telecopier
415-954-0938

Graham E. Berry, Esquire
LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 North Figueroa Street. Suite 1200
Los Angeles, California 90012

By Telecopier
213-750-7900

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

By Telecopier
213-662-6419

(By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: March 19, 1992

